

108TH CONGRESS  
2D SESSION

# H. R. 5103

To repeal mandatory minimum sentencing for certain Federal crimes and restore justice and fairness to Federal sentencing practices.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 15, 2004

Ms. WATERS introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To repeal mandatory minimum sentencing for certain Federal crimes and restore justice and fairness to Federal sentencing practices.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Justice in Sentencing  
5       Act of 2004”.

6       **SEC. 2. FINDINGS.**

7       Congress makes the following findings:

1           (1) In August 2003, United States Supreme  
2           Court Justice Anthony Kennedy, in a speech before  
3           the annual convention of the American Bar Associa-  
4           tion, called for a reexamination of the issue of man-  
5           datory minimum sentencing and a review of “. . .  
6           the inadequacies—and the injustices—in our penal  
7           correctional systems”.

8           (2) Justice Kennedy stated that in too many  
9           cases, mandatory minimum sentences are unwise  
10          and unjust, and that he could “. . . accept neither  
11          the necessity nor the wisdom of mandatory minimum  
12          sentences”.

13          (3) Justice Kennedy concluded that in the Fed-  
14          eral criminal justice system “[o]ur resources are  
15          misspent, our punishments too severe, our sentences  
16          too long”.

17          (4) In response, in October 2003, the President  
18          of the ABA created the Justice Kennedy Commis-  
19          sion to investigate the issues raised by Justice Ken-  
20          nedy’s August 2003 speech.

21          (5) On June 23, 2004, the Commission issued  
22          a report, which concluded that America’s criminal  
23          justice systems rely too heavily on incarceration and  
24          that they need to consider more effective alter-

1 natives, including shorter sentences, treatment and  
2 prisoner reentry programs.

3 (6) At its August 2004 annual convention, the  
4 ABA House of Delegates adopted the recommenda-  
5 tions of the Justice Kennedy Commission, including  
6 the recommendation to repeal mandatory minimum  
7 sentencing statutes.

8 (7) Since the enactment of mandatory min-  
9 imum sentencing for drug users, the Federal Bureau  
10 of Prisons budget increased by more than 2,016 per-  
11 cent, from \$220,000,000 in 1986 to about  
12 \$4,437,000,000 in 2004.

13 (8) Mandatory minimums have not reduced sen-  
14 tencing discretion, but rather have transferred dis-  
15 cretion from judges to prosecutors. Prosecutors, not  
16 judges, have the discretion to reduce a charge, ac-  
17 cept or deny a plea bargain, reward or deny a de-  
18 fendant's substantial assistance or cooperation in the  
19 prosecution of someone else, and ultimately, to de-  
20 termine the final sentence of the defendant.

21 (9) African Americans comprise 12 percent of  
22 the United States population, 15 percent of drug  
23 users, 17 percent of cocaine users, but 33 percent of  
24 all Federal drug convictions and 57 percent of Fed-  
25 eral cocaine convictions.

1           (10) In 1986, before the mandatory minimums  
2           for crack cocaine offenses became effective, the aver-  
3           age Federal offense for African Americans was 11  
4           percent higher than whites. Following the implemen-  
5           tation of mandatory drug sentencing laws, the aver-  
6           age drug offense sentence for African Americans was  
7           49 percent higher than whites.

8           (11) The average dealer holds a low-wage job  
9           and sells part time to obtain for his or her own use.

10          (12) According to the Justice Department, the  
11          time spent in prison does not affect recidivism rates.

12          (13) Largely as a result of mandatory minimum  
13          sentencing statutes, there are now more than  
14          2,100,000 persons in prison and almost 70 percent  
15          of the people behind bars in America are persons of  
16          color. African Americans made up 40 percent of the  
17          Federal prison population in August 2003, up from  
18          31 percent in 1986 before Federal mandatory mini-  
19          mums were enacted.

20          (14) As a result of mandatory minimum sen-  
21          tencing statutes, particularly with respect to drug  
22          crimes, in 2001, the average Federal drug traf-  
23          ficking conviction was 72.7 months while the average  
24          Federal manslaughter sentence was 34.3 months,

1 the average assault sentence 37.7 months, and the  
2 average sexual abuse sentence 65.2 months.

3 (15) In 1999, African Americans constituted 13  
4 percent of drug users. In that same year, African  
5 Americans constituted 35 percent of drug arrests,  
6 53 percent of drug convictions, and 58 percent of  
7 those in prison for drug offenses.

8 (16) Though their rates of drug use are roughly  
9 equal, because of aggressive police tactics, racial  
10 profiling, and other activities heavily targeted at  
11 street level drug activity in urban areas (as opposed  
12 to the less visible drug activity prevalent in more af-  
13 fluent areas), African Americans are arrested for  
14 drug offenses at six times the rate of whites.

15 (17) Federal mandatory minimum sentences  
16 make African Americans more likely to be incarcer-  
17 ated and for longer periods than their white counter-  
18 parts. In the year 2000, 84.7 percent of crack co-  
19 caine cases were brought against African Americans  
20 even though, in that year, African Americans com-  
21 prised only about 26.6 percent of crack users. Only  
22 5.6 percent of crack cases that year were brought  
23 against Caucasians even though they constituted  
24 64.4 percent of crack users.

1           (18) In the 20 years from 1981 to 2001, the  
2           sentenced portion of the Federal prison population  
3           grew from about 20,000 in 1981 to about 115,000  
4           prisoners. During that same period, the percentage  
5           of drug offenders in Federal prison grew from 25  
6           percent to almost 60 percent. Mandatory minimum  
7           sentences for drug crimes are the largest drivers of  
8           expanding prison populations.

9   **SEC. 3. APPROVAL OF CERTAIN PROSECUTIONS BY ATTOR-**  
10                   **NEY GENERAL.**

11          A Federal prosecution for an offense under the Con-  
12          trolled Substances Act, the Controlled Substances Import  
13          and Export Act, or for any conspiracy to commit such an  
14          offense, where the offense involves the illegal distribution  
15          or possession of a controlled substance in an amount less  
16          than that amount specified as a minimum for an offense  
17          under section 401(b)(1)(A) of the Controlled Substances  
18          Act (21 U.S.C. 841(b)(1)(A)) or, in the case of any sub-  
19          stance containing cocaine or cocaine base, in an amount  
20          less than 500 grams, shall not be commenced without the  
21          prior written approval of the Attorney General.

22   **SEC. 4. MODIFICATION OF CERTAIN SENTENCING PROVI-**  
23                   **SIONS.**

24          (a) SECTION 404.—Section 404(a) of the Controlled  
25          Substances Act (21 U.S.C. 844(a)) is amended—

- 1 (1) by striking “not less than 15 days but”;
- 2 (2) by striking “not less than 90 days but”;
- 3 (3) by striking “not less than 5 years and”; and
- 4 (4) by striking the sentence beginning “The im-
- 5 position or execution of a minimum sentence”.

6 (b) SECTION 401.—Section 401(b) of the Controlled  
7 Substances Act (21 U.S.C. 841(b)) is amended.—

8 (1) in paragraph (1)(A)—

9 (A) by striking “which may not be less  
10 than 10 years and or more than” and inserting  
11 “for any term of years or for”;

12 (B) by striking “and if death” the first  
13 place it appears and all that follows through  
14 “20 years or more than life” the first place it  
15 appears;

16 (C) by striking “which may not be less  
17 than 20 years and not more than life imprison-  
18 ment” and inserting “for any term of years or  
19 for life”;

20 (D) by inserting “imprisonment for any  
21 term of years or” after “if death or serious bod-  
22 ily injury results from the use of such substance  
23 shall be sentenced to”;

1 (E) by striking the sentence beginning “If  
2 any person commits a violation of this subpara-  
3 graph”; and

4 (F) by striking the sentence beginning  
5 “Notwithstanding any other provision of law”  
6 and the sentence beginning “No person sen-  
7 tenced”; and

8 (2) in paragraph (1)(B)—

9 (A) by striking “which may not be less  
10 than 5 years and” and inserting “for”;

11 (B) by striking “not less than 20 years or  
12 more than” and inserting “for any term of  
13 years or to”;

14 (C) by striking “which may not be less  
15 than 10 years and more than” and inserting  
16 “for any term of years or for”;

17 (D) by inserting “imprisonment for any  
18 term of years or to” after “if death or serious  
19 bodily injury results from the use of such sub-  
20 stance shall be sentenced to”; and

21 (E) by striking the sentence beginning  
22 “Notwithstanding any other provision of law”.

23 (c) SECTION 1010.—Section 1010(b) of the Con-  
24 trolled Substances Import and Export Act (21 U.S.C.  
25 960(b)) is amended—



1 (1) in paragraph (1)—

2 (A) by striking “of not less than 10 years  
3 and not more than” and inserting “for any  
4 term of years or for”;

5 (B) by striking “and if death” the first  
6 place it appears and all that follows through  
7 “20 years and not more than life” the first  
8 place it appears;

9 (C) by striking “of not less than 20 years  
10 and not more than life imprisonment” and in-  
11 serting “for any term of years or for life”;

12 (D) by inserting “imprisonment for any  
13 term of years or to” after “if death or serious  
14 bodily injury results from the use of such sub-  
15 stance shall be sentenced to”; and

16 (E) by striking the sentence beginning  
17 “Notwithstanding any other provision of law”;  
18 and

19 (2) in paragraph (2)—

20 (A) by striking “not less than 5 years  
21 and”;

22 (B) by striking “of not less than twenty  
23 years and not more than” and inserting “for  
24 any term of years or for”;

1 (C) by striking “of not less than 10 years  
2 and not more than” and inserting “for any  
3 term of years or to”;

4 (D) by inserting “imprisonment for any  
5 term of years or to” after “if death or serious  
6 bodily injury results from the use of such sub-  
7 stance shall be sentenced to”; and

8 (E) by striking the sentence beginning  
9 “Notwithstanding any other provision of law”.

10 (d) SECTION 418.—Section 418 of the Controlled  
11 Substances Act (21 U.S.C. 859) is amended by striking  
12 the sentence beginning “Except to the extent” each place  
13 it appears and by striking the sentence beginning “The  
14 mandatory minimum”.

15 (e) SECTION 419.—Section 419 of the Controlled  
16 Substances Act (21 U.S.C. 860) is amended by striking  
17 the sentence beginning “Except to the extent” each place  
18 it appears and by striking the sentence beginning “The  
19 mandatory minimum”.

20 (f) SECTION 420.—Section 420 of the Controlled  
21 Substances Act (21 U.S.C. 861) is amended—

22 (1) by striking subsection (e); and

23 (2) in subsection (f), by striking “, (c), and (e)”  
24 and inserting “and (c)”.

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